

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 30382 of 2006(P)

AGAINST THE ORDER DATED 07 /10/2006 IN EP.281/2001 IN
OS.439/1992 of PRL.M.C.,ERNAKULAM
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PETITIONER:

K.M. KESAVAN,
SON OF D.NARAYANAN EMBRANTHIRI, AGED 61,
RESIDING AT MOOKAMBIKA NIVAS, CHUTTUPADUKARA,
EDAPPILLY NORTH VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.T.B.THANKAPPAN
SMT.ALICE THOMAS

RESPONDENTS:

1. MOOKAMBIKA AMMA,
W/O. NARAYANAN EMBRANTHIRI, KIZHAKKEMADATHIL,
ROY BHAVAN, KARIYAD, ALUVA (DIED).
2. K.M. NARAYANAN
SON OF D.NARAYANAN EMBRANTHIRI, ROY BHAVAN,
MECKAD P.O., NEDUMBASSERY.
3. SANTHA, W/O.LATE K.RAMBHATT,
KRISHNA KRIPA, THOZHUKKAD, PERINGAD P.O.
4. SARASWATHY, W/O.P.M.NARAYANAN,
KRISHNA KRIPA, THOZHUKKAD, PERINGAD P.O.
5. DEVAKI, W/O.LATE M.S.RAMAN EMBRANTHIRI,
T.K.BHAVAN, KANINAD P.O., PUTHENCROUZ,
ERNAKULAM DISTRICT.
6. K.M. JAYANTHY, W/O.M.VIJAYAN,
MANU NIVAS, THEKKEMMURI P.O., CHERPLASSERY.
7. K.M. RATHNAVATHY, W/O.PADMANABHAN,
LAKSHMI NIVAS, VAIKOM ROAD, TRIPUNITHURA.
8. K.M. DEVAKEY,
W/O. K.V.SUBRAYAN EMBRANTHIRI, KANNIYATT MADAM,
KANINADU KARA, PUTHENCROUZ.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

W.P.(C)NO.30382 OF 2006

DATED THIS THE 27th DAY OF NOVEMBER, 2006

JUDGMENT

Petitioner is the decree holder. First respondent is the deceased judgment debtor and respondents 2 to 8 are her legal heirs. As Per Ext.P1 compromise, first respondent agreed to give 3 cents of land from her properties on the western side through out the north-south direction to petitioner, which is in continuation of the property of his wife, who was the second defendant in the suit. Accepting Ext.P1 compromise petition, a decree was passed directing first respondent to execute a sale deed in respect of the said three cents, agreed to be assigned, in favour of petitioner within three weeks from the date of the decree. It was also provided that on her failure, petitioner can get the sale deed executed through Court. Petitioner filed E.P.281/01 before Munsiff Court, Ernakulam for execution of the decree. A commissioner was appointed and the commissioner demarcated the property. Petitioner contended that the three cents agreed to be assigned under the compromise decree has to be identified only after identifying the plaint schedule property, which lies to the west of the property of second defendant in the suit and as there is some excess land, which belongs to his wife the second defendant. According to petitioner plaint schedule property

should be measured first and only thereafter the three cents can be fixed. Judgment debtor contended that the property agreed to be given to petitioner is the three cents, which lies immediately to the west of the western boundary of the property of the wife of petitioner. Commissioner prepared two sketches in accordance with the contentions raised by parties. Under sketch 1, plot B was shown as the three cents, agreed to be given to the petitioner under the compromise decree. The Commissioner has shown plot A as the property of the wife of petitioner and plot C as the remaining property of the judgment debtor and plot B as the three cents. Commissioner under sketch II had shown the property of the wife of petitioner as plot C, 3 cents as plot B and the remaining property of judgment debtor as plot A. The executing Court accepted the first sketch and held that what was agreed by judgment debtor is to sell the three cents property which lies immediately touching the western boundary of the property of the wife of petitioner and therefore plot B marked therein is the three cents which is agreed to be sold. The executing Court under Ext.P4 order directed the judgment debtor to surrender that property and to execute the sale deed in favour of petitioner. Ext.P4 is challenged in this petition filed under Article 227 of Constitution of India.

2. The argument of learned Counsel appearing for petitioner is that what was agreed to under the compromise deed is to sell three cents of property from the property of

the judgment debtor, which is 12 cents and the executing Court should have fixed that 12 cents and demarcated three cents which lies on the eastern side of the said 12 cents and if so, the executing Court should have relied on the sketch No.2 and Ext.P4 order is to be quashed.

3. On hearing learned counsel appearing for petitioner, I do not find any infirmity in Ext.P4 order warranting interference in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

4. What was agreed under Ext.P1 compromise was to give three cents of the property belonging to judgment debtor to the petitioner. That property, which was agreed to be sold is the property, which lies immediately to the west of the property of the wife of petitioner. The attempt of petitioner is to get some more property under the guise that excess land is available. Argument was that to fix the three cents plaint schedule property having an extent of 12 cents should be fixed and thereafter three cents should have been demarcated as its eastern portion. Attempt is to get some more land, which lies further to the east of the property now demarcated by Commissioner and accepted by the Court below. But what was agreed to be sold is only three cents, which lies immediately to the west of the eastern boundary of the property of the wife of the petitioner. Executing Court correctly fixed the property of second defendant and thereafter fixed three cents, which was agreed to be sold under Ext.P1 compromise.

Therefore, I find no reason to interfere with that finding.

5. Learned Counsel appearing for petitioner then submitted that as per Ext.P4 order, deceased judgment debtor was directed to surrender and execute the sale deed and the judgment debtor had died much earlier and respondents 2 to 8 were impleaded as his legal heirs. Ext.P4 order can only be understood as a direction to respondents 2 to 8, the legal heirs of judgment debtor to surrender and to execute the sale deed. It is also made clear that executing Court has to execute the sale deed in favour of petitioner if respondents 2 to 8 fail to execute the sale deed in respect of the said three cents as demarcated by Commissioner and accepted by Court below.

Petition disposed accordingly.

M.SASIDHARAN NAMBIAR, JUDGE

Acd

